

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Daniel Clephar)	File No.: EB-02-TP-650
2816 Pioneer Road, Apartment 4)	NAL/Acct. No. 200332700020
Orlando, Florida 32808)	FRN 0008369522

MEMORANDUM OPINION AND ORDER

Adopted: August 29, 2005

Released: September 14, 2005

By the Acting Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order* (“*Order*”), we deny the petition for reconsideration filed by Daniel Clephar (“Mr. Clephar”). Mr. Clephar seeks reconsideration of the *Forfeiture Order*¹ in which the Chief, Enforcement Bureau, found him liable for a monetary forfeiture in the amount of \$10,000 for violation of Section 301 of the Communications Act of 1934, as amended (“Act”).² The noted violation involves Mr. Clephar’s operation of a radio station on the frequency 92.7 MHz without Commission authorization.

II. BACKGROUND

2. On December 6, 2002, two agents from the Commission's Tampa, Florida Field Office (“Tampa Office”) working in the Orlando, Florida area detected an FM radio station operating on the frequency 92.7 MHz. The voice on the broadcast identified the station as “Radio Maximo.” Using direction-finding equipment and techniques, the agents determined that the station was broadcasting from 4816 Tam Drive, Orlando, Florida. The agents took field strength measurements of the station’s signal and determined that the station’s operation was such that it required a license. The Commission's records showed that no license had been issued for this operation. The agents traced the location of the station’s signal to Mr. Clephar’s residence. The agents inspected the station in the garage attached to the residence, found that the transmitter was tuned to 92.7 MHz, and identified Mr. Clephar’s voice as the same one they heard identify the station on the air as “Radio Maximo.”

3. On April 14, 2003, the District Director of the Tampa Office issued Mr. Clephar a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) in the amount of \$10,000 for apparent willful violation of Section 301 of the Act.³ Mr. Clephar did not file a response to the *NAL*. The Chief of the Enforcement Bureau issued a *Forfeiture Order* on November 3, 2003, based on the record before the Bureau, affirming the forfeiture proposed by the *NAL*. Mr. Clephar sought reconsideration of the *Forfeiture Order*. Therein, Mr. Clephar denied that he was operating a radio station, claiming that he was merely “testing the equipment,” and stated that he does not have the ability to pay the \$10,000 forfeiture penalty assessed. Mr. Clephar’s reconsideration request did not include any financial information.

¹ See *Daniel Clephar*, 18 FCC Rcd 22914 (Enf. Bur. 2003).

² 47 U.S.C. § 301.

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332700020 (Enf. Bur., Tampa, Florida Office, released April 14, 2003).

III. DISCUSSION

4. Mr. Clephar's denial that he was operating a radio station appears to be contradicted by his own admission that he had the equipment and was only testing it, and by the investigation conducted by the agents in the Tampa Office. There is no "testing" exemption to Section 301 of the Act. The agents heard Mr. Clephar's voice on the radio, and observed equipment set up for a radio station at Mr. Clephar's premises that was tuned to the frequency which the agents' tracking devices registered. Thus, Mr. Clephar's statement does not comport with the factual findings in the record. Moreover, because Mr. Clephar's statement that he is unable to pay the forfeiture is unsupported by any documentation,⁴ there is no demonstrated inability to pay and thus no basis for reduction of the forfeiture amount.

IV. ORDERING CLAUSES

5. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Act and Section 1.106 of the Rules, Mr. Clephar's petition for reconsideration **IS DENIED**.

6. **IT IS FURTHER ORDERED** that, pursuant to Section 503(b) of the Act,⁵ and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules,⁶ Mr. Clephar **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$10,000 for violating Section 301 of the Act.

7. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules⁷ within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.⁸ Payment may be made by credit card to the Commission's Credit and Debt Management Center at (202) 418-1995 or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁹

⁴ Paragraph 10 of the *NAL* stated that the Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner provides certain federal tax returns, financial statements or other reliable documentation accurately reflecting the petitioner's current financial status.

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

⁷ 47 C.F.R. § 1.80.

⁸ 47 U.S.C. § 504(a).

⁹ See 47 C.F.R. § 1.1914.

8. **IT IS FURTHER ORDERED THAT** this *Order* shall be sent by regular mail and by certified mail, return receipt requested, to Mr. Daniel Clephar, 2816 Pioneer Road, Apartment 4, Orlando, Florida 32808.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Acting Chief, Enforcement Bureau